IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 269 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOVINDBHAI MANGABHAI PARMAR

Versus

PUSHPABEN GOVINDBHAI PARMAR

Appearance:

1. Criminal Revision Application No. 269 of 2001

MS SADHANA SAGAR for Petitioner No. 1

Notice to Respondent No.1 not received back

MR HL JANI, PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/12/2001

ORAL JUDGEMENT

#. Heard the learned advocates.

#. This Revision Application under Section 397 read with Section 401 CrPC has been preferred by the convict through jail against the orders of conviction and sentence recorded on 15th September, 2000 by the learned Judge, Family Court, Ahmedabad in Misc.Applications Nos.2232/2000 and 2233/2000. The Registry has registered a composite Revision Application against the above referred two orders of conviction and sentence. This Revision Application is entertained in so far as it challenges the conviction and sentence recorded in Misc.Application No.2232/2000. The Registry is directed to register a separate Revision Application so far as the challenge to the conviction and sentence recorded in Misc.Application No.2232/2000 is concerned.

#. The petitioner is the husband who was, under order dated 29th March, 1994 made in Misc.Application No.174/92, ordered to pay monthly maintenance of Rs.500=00 to his estranged wife, the respondent no.1 and three minor children. It appears that the petitioner has neglected or was unable to pay the maintenance as ordered. At the relevant time the petitioner was in default of payment of monthly allowance for 37 months. Feeling aggrieved, the respondent no.1 made above referred Misc.Application No.2232/2000 in the Family Court at Ahmedabad under Section 125(3) CrPC. The petitioner appeared before the Family Court and expressed his inability to pay the maintenance as ordered. The learned Judge, therefore, under the impugned order, held that the petitioner ought to be sentenced to Simple Imprisonment for ten days for every month of default in payment of allowance. Hence, the petitioner has been sentenced to Simple Imprisonment for 370 days. Feeling aggrieved, the petitioner has preferred the present Revision Application.

#. The order of the learned Judge, Family Court is ex-facie bad and illegal and requires to be quashed and set aside. First, Section 125(3) CrPC empowers the Court to sentence such person, for the whole or any part of each month's allowance remaining unpaid, to imprisonment for a term which may extend to one month or until payment, if sooner made. The Hon'ble Supreme Court has, in its judgment in the matter of SHAHADA KHATOON AND ORS. vs. AMJAD ALI AND ORS. [(1999) 5 SCC 672], considered the scope and ambit of the above provision and has held that, "the language of sub section (3) of Section 125 is quite clear and it circumscribes the power of the Magistrate to impose imprisonment for a term which may extend to one month or until the payment, if sooner made. Thus, power of the Magistrate can not be enlarged and

therefore the only remedy would be after expiry of one month, for breach or non-compliance with the order of the Magistrate the wife can approach the Magistrate again for similar relief. By no stretch of imagination can the Magistrate be permitted to impose sentence for more than one month."

Second, the first proviso to the said sub section (3) of Section 125 CrPC imposes the period of limitation within which the application under Section 125(3) can be entertained. It reads as under :

> "Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:"

The said proviso necessarily means that the aggrieved wife shall have to approach the learned Magistrate under Section 125(3) CrPC within a period of one year from the date the monthly allowance becomes due and remains unpaid. In the present case, the application under Section 125(3) CrPC was made on 6th November, 1996 complaining about the default in payment of monthly allowance right from 22nd September, 1993 to 21st November, 1996. Thus, the application complaining of non-payment of monthly allowance for over a period of one year, the Court would have no power to entertain such complaint for a period prior to one year immediately preceding the date of the application. The learned Judge, therefore, could not have taken into consideration the default in payment of monthly allowance for the period prior to the month of December, 1995, nor could the learned Judge have imposed sentence for more than a month at a time.

#. For the above referred reasons, the Revision Application is allowed. The impugned order dated 15th September, 2000 made by the Family Court, Ahmedabad in Misc.Application No.2232/2000 is quashed and set aside. The petitioner be, unless he is required to be detained in some other case, set free forthwith. Rule is made absolute.

27th December, 2001. (Ms. R.M. Doshit, J.)

/sakkaf